

7/12/01

FORM FOR USE IN APPLICATIONS
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

7/01 JUN -5 A 10:18

DEBRA P. HACKBART
U.S. DISTRICT COURT

Name WALLACE RIVERS

106459
Prison Number

HOLMAN CORRECTIONAL FACILITY, HOLMAN 3700
ATMORE, AL. 36503
Place of Confinement

United States District Court Middle District of ALABAMA

Case No. 1:01-CV-524-JD-TFM
(To be supplied by Clerk of U. S. District Court)

WALLACE RIVERS, PETITIONER
(Full Name) (Include name under which you were convicted)

GRANT CULLIVER, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF ALABAMA
_____, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- X(3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies * must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711
Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

***If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

PETITION

1. Name and location of court which entered the judgment of conviction under attack HOUSTON COUNTY, ALABAMA CIRCUIT COURT
2. Date of judgment of conviction December 15, 1980
3. Length of sentence LIFE WITHOUT PAROLE Sentencing Judge JERRY M. WHITE

4. Nature of offense or offenses for which you were convicted: FELONY MURDER
5. What was your plea? (check one)
(a) Not guilty (X)
(b) Guilty ()
(c) Nolo contendere ()
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A
6. Kind of trial: (Check one)
(a) Jury (X)
(b) Judge only ()
7. Did you testify at the trial? Yes () No (X)
8. Did you appeal from the judgment of conviction? Yes (X) No ()
9. If you did appeal, answer the following:
(a) Name of court ALABAMA COURT OF CRIMINAL APPEALS
(b) Result AFFIRMED
(c) Date of result UNKNOWN
If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: N/A
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (X) No ()
11. If your answer to 10 was "yes", give the following information:
(a) (1) Name of court HOUSTON COUNTY CIRCUIT COURT
(2) Nature of proceeding POSTCONVICTION PETITION
(3) Grounds raised DENIED EFFECTIVE COUNSEL ASSISTANCE
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)
(5) Result DENIED
(6) Date of result UNKNOWN

(b) As to any second petition, application or motion give the same information:

(1) Name of court HOUSTON COUNTY CIRCUIT COURT

(2) Nature of proceeding POSTCONVICTION PETITION

(3) Grounds raised UNKNOWN

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)

(5) Result denied

(6) Date of result UNKNOWN

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court HOUSTON COUNTY CIRCUIT COURT

(2) Nature of proceeding POSTCONVICTION PETITION

(3) Grounds raised UNKNOWN

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)

(5) Result denied

(6) Date of result UNKNOWN

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes (X) No ()

(2) Second petition, etc. Yes (X) No ()

(3) Third petition, etc. Yes (X) No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

✓(k) Denied access to court due to inability to pay filing fee.

✓(l) illegally sentenced to life without parole.

✓(m) unqualified jurymen from which trial jury was drawn

(K) Ground one: Denied access to court due to inability to pay filing fee.

Supporting FACTS (tell your story briefly without citing cases or law):

ON DECEMBER 27, 2008 PETITIONER APPLIED FOR POSTCONVICTION RELIEF FROM AN ILLEGALLY IMPOSED LIFE WITHOUT PAROLE SENTENCE IMPOSED BY HOUSTON COUNTY CIRCUIT COURT. ON JANUARY 16, 2009 THE HOUSTON CIRCUIT COURT NOTIFIED PETITIONER THAT HE WOULD HAVE TO PAY A \$20.00 FILING FEE BEFORE HIS POSTCONVICTION PETITION WOULD BE FILED. (SEE ATTACHED EXHIBIT "A" PAGES 1 AND 2) PETITIONER CONTACTED THE APPELLATE AND SUPREME COURTS OF ALABAMA, AS IS REQUIRED IN SUCH A SITUATION AND THE APPELLATE AND SUPREME COURT OF ALABAMA DENIED THE PLEAS OF PETITIONER (SEE EXHIBITS (A) AND (B) ATTACHED). PETITIONER IS ENTITLED TO THE WRIT.

(L) Ground two: illegally sentenced to life without parole.

Supporting FACTS (tell your story briefly without citing cases or law):

ON APRIL 23, 1981 IN THE HOUSTON COUNTY CIRCUIT COURT PETITIONER WAS CONVICTED AS A HABITUAL FELON/OFFENDER AND SENTENCE TO LIFE WITHOUT PAROLE. IMPRISONMENT, THE PROSECUTION COULD NOT FACTUALLY PROVE THE ALLEGED PRIOR CONVICTIONS THEY PRESENTED AT THE APRIL 23, 1981 HABITUAL OFFENDER TREATMENT FOR ENHANCEMENT OF A SENTENCE. THEREFORE, THE PROSECUTION ASKED THE PRESIDING JUDGE, HON. JERRY M. WHITE TO GIVE EVIDENCE OF HIS PERSONAL KNOWLEDGE AFTER WHICH THE PRESIDING JUDGE HIMSELF GAVE EVIDENCE TO CONVICT PETITIONER THEN SENTENCE PETITIONER TO LIFE WITHOUT PAROLE. PETITIONER IS ENTITLED TO THE WRIT.

(M) Ground three: unqualified jury venire from which trial jury was drawn.

Supporting FACTS (tell your story briefly without citing cases or law):

AT PETITIONER'S TRIAL ON THE CHARGE OF FELONY MURDER THE JURY VENIRE WAS NOT QUALIFIED ACCORDING TO LAW. IT WAS NOT DETERMINED IF ANY OF THE PROSPECTIVE JURORS WERE CITIZENS OF THE UNITED STATES NOR HOUSTON COUNTY, ALABAMA; IT WAS NOT DETERMINED IF THE PROSPECTIVE JURORS HAD RESIDED IN HOUSTON COUNTY FOR AT LEAST 12 MONTHS; IT WAS NOT DETERMINED IF THE PROSPECTIVE JURORS WERE 19 YEARS OF AGE; OR IF THEY WERE WITNESSES OF THE CHARGE BEING TRIED; OR IF THEY WERE OR HAD BEEN LAW ENFORCEMENT AGENTS OR IF THEY WERE BIASED AGAINST PETITIONER OR, ENDORSED THE INDICTMENT BEING TRIED. THE JURY WAS NOT LEGALLY QUALIFIED, AND THE WRIT IS DUE TO PETITIONER.

D. Ground four: n/a

Supporting FACTS (tell your story briefly without citing cases or law):

n/a

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them:

exhibits (A) and (B) attached hereto
show that petitioner has been denied access
to the courts of the state of Alabama
due to his financial inability to pay a
\$20.00 filing fee, otherwise the above
grounds are exhausted for all means
and purposes, until the state court
allows petitioner access to its bench
even if he is unable to pay the \$20.00
filing fee, petitioner has no other choice
but to plead to the federal court system

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes () No (X)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing n/a

(b) At arraignment and plea Cada M. Carter P.O. Box 536
DOTHAN, AL.

(c) At trial (same)

(d) At sentencing (same)

(e) On appeal UNKNOWN

(f) In any post-conviction proceeding PRO-SE

(g) On appeal from any adverse ruling in a post-conviction proceeding: PRO-SE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes () No (X)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No (X)

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes () No () N/A

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

PRO-SE

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on JUNE 4, 2009.
(date)

x Wallace River
Signature of Petitioner

*
106459

INCL 152, 1109-57
HOLMAN CORRECTIONAL FACILITY
HOLMAN 3700
ATMORE, AL, 36503



CLERK OF THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
P. O. Box 711
MONTGOMERY, ALABAMA 36101

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